IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1029 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CROWN STEEL COMPANY THR'ITS PARTNER A.G.SHAH - Petitioner
Versus
UNION OF INDIA THR' SECRETARY & 2 - Respondents

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Appearance :
MR ANILKUMAR D MARU for Petitioner.
DS AFF.NOT FILED (N) for Respondent(s) : 1 - 3.
MR YN RAVANI, CENTRAL GOVT.STANDING COUNSEL for Respondents.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 29/03/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Rule. Mr.Y.N.Ravani, learned Central Government Standing Counsel, waives service of notice on behalf of the respondents. Having regard to the facts of the case, the petition is heard today.

2. By means of filing this petition under Articles 226 & 227 of the Constitution of India, the petitioner i.e. Crown Steel Company, has prayed to issue a writ of mandamus, or a writ of certiorari, or any other appropriate writ, order or direction to quash and set aside the order dated October 31, 2005 rendered by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi, in C/M/797/05 C/ROA/157/05 in Appeal No.C/414/02, by which the prayer made by the petitioner to restore the appeal on file has been dismissed on the ground that the petitioner had made false averments to the effect that with reference to Stay Order No.285-288/02-B, dated November 13, 2002, the matter had reached upto the Supreme Court and remanded to the Tribunal for reconsideration.

3. The petitioner is engaged in the business of Ship-Breaking at Alang, near Bhavnagar. The department proposed to assess the bunker fuel oil and ship stores, such as foodstuff on board of a number of vessels imported by the petitioner for breaking during the years 1991 to 1996 under their respective tariff head. Several bills of entries were filed at the relevant time and assessed provisionally. On appeal, those orders were set aside and the matter was

remanded to the lower authority with a direction to follow the principles of natural justice. The petitioner requested the then D.C.C. To supply documents relied upon by the department, but, the petitioner was called upon to file written submissions and attend personal hearing. According to the petitioner, in absence of documents, which were required to be supplied by the department, it was futile to appear before D.C.C. and, therefore, the petitioner and others did not appear before D.C.C. Therefore, the Deputy Commissioner of Customs passed an order dated March 20, 2001 confirming earlier assessment ordered by the Assistant Commissioner. Feeling aggrieved, the petitioner preferred appeal before the Commissioner (Appeals). The Commissioner (Appeals) by an order dated September 19, 2001 directed the petitioner to deposit 90% of the amount confirmed and also directed the Assistant Commissioner and/or Deputy Commissioner to provide all the material documents on the basis of which, final assessment orders were issued. An application was moved by the petitioner to modify the conditions stipulated in Stay Order, but, the Commissioner (Appeals) rejected the said request vide order dated March 18, 2002 and directed the petitioner to comply with the conditions stipulated in order dated September 19, 2001, by March 31, 2002. The Commissioner(Appeals) dismissed the appeals filed by the petitioner as well as others for non-compliance of the conditions stipulated in order dated September 19, 2001, vide order dated June

13, 2002. Against the order of the Commissioner(Appeals), the petitioner preferred Appeal No. C/414/02 before the Customs, Excise & Service Tax Appellate Tribunal, New Delhi on July 29, 2002. The petitioner submitted stay application before the Tribunal. On November 13, 2002, the Tribunal granted stay on condition of the petitioner depositing a sum of Rs. 3 Lakhs against the total demand of Rs.12,05,840/-. The petitioner submitted a modification application on December 14, 2002 in view of the judgment of the High Court dated March 13, 2002 rendered in Special Civil Application No.6299 of 2002. Before the application for modification of conditions stipulated in stay-order could be considered, the petitioner requested the Tribunal to permit the petitioner to withdraw the appeal under a belief that the Assistant Commissioner of Customs, Bhavnagar would reconsider the matter and pass appropriate order. The Tribunal granted permission to the petitioner to withdraw the appeal. Thereafter, the petitioner moved Assistant Commissioner of Customs on July 31, 2003 for de novo consideration of its case with the case of other ship breakers and also requested to accord personal hearing. However, the Assistant Commissioner intimated the petitioner on November 7, 2003 that there was no order from any appellate authority ordering de novo proceedings and further directed the petitioner to pay a sum of Rs.12,05,840/- within seven days. Thereupon, the petitioner with six other ship-breakers filed Special Civil Application Nos.15977 to 15982 and

15986 of 2003 before the High Court. The High Court permitted the petitioners to withdraw the petitions on November 19, 2003 to enable the petitioners to approch the Tribunal at New Delhi. Accordingly, the petitioner submitted Misc.Application No. C/M/797/05 C/ROA/157/05 on November 26, 2003 and requested the Tribunal to restore the appeal on file and hear the appeal on merits. The Tribunal rejected the said application by order dated February 12, 2004 holding that there was no error or mistake apparent on the face of the record, when the permission was granted to the learned advocate for the petitioner to withdraw the appeal. Feeling aggrieved by the order of the Tribunal, the petitioner preferred Special Civil Application No. 3153 of 2004 before this Court, praying to remand the matter for de novo consideration by the Assistant Commissioner of Customs, Bhavnagar. It may be mentioned that others had also filed petitions along with the petitioner. Those petitions were dismissed by the High Court vide order dated September 20, 2004. Thereafter the petitioner requested the Assistant Commissioner of Customs on September 6, 2004 to undertake de novo proceedings for final assessment pursuant to order of the Tribunal dated February 12, 2004. However, by a communication dated September 9, 2004, the Assistant Commissioner of Customs informed the petitioner that as the Tribunal had not directed to initiate de novo proceeding in the case of the petitioner, the prayer made by the petitioner could not be

accepted. According to the petitioner, it was decided by the petitioner to approach the Supreme Court and the matters were being handled by one ship-breaker, namely, Shri Hari Krishna Agrawal of M/s. J.M.Industries, and accordingly, certain Special Leave Petitions (Civil Appeals) were filed before the Supreme Court. The Supreme Court granted Special Leave to appeal on July 15, 2005, and directed that in case the appellant deposited full amount as directed by the Tribunal as a condition for hearing the appeal, the impugned orders shall stand set aside. In view of order of the Supreme Court, the petitioner submitted an application for restoration of appeal before the Tribunal, New Delhi on August 23, 2005. The said application has been rejected by order dated October 31, 2005, giving rise to the instant petition.

4. This Court has heard Mr.A.D.Maru, learned counsel for the petitioner and Mr.Y.N.Ravani, learned Central Government Standing Counsel for the respondents, at length and in great detail. From the record of the case, it is evident that pursuant to the direction given by the Supreme Court, the matters of other ship-breakers were remanded to the Tribunal for reconsideration. In Para-1 of the application for restoration of appeal, it was averred by the petitioner that, “In reference to the Stay Order No.285-288/02-B, dated 13.11.2002 (xerox copy annexed as Annexure-A), the matter reached upto the Hon'ble Supreme Court and ultimately, ordered

vide order dated 15.7.2005(xerox copy annexed as Annexure-B) to deposit the amount in terms of the order of the Tribunal. Applicant was directed to deposit Rs.3,00,000/- against the entire demand of the customs duty of Rs.12,05,840/- on fuel oil and foodstuff of the ships imported for breaking during the period from 1991-92 to 1996-97. But, as directed by the customs to reach their revenue target figure, applicant deposited entire amount of Rs.12,05,840/- in two installments on 22.9.2004 and 28.10.2004. Attested xerox copy of two challans is annexed as Annexure-C."

5. The statement made by the petitioner that with reference to Stay Order No.285-288/02-B, dated November 13, 2002, the matter reached upto the Supreme Court is construed by the Tribunal as a false statement, and on that basis, the application is rejected by the Tribunal. However, the record shows that with reference to Stay Order No.285-288/02-B, dated November 13, 2002, other matters had reached upto the Supreme Court and the Supreme Court remanded the matters to the Tribunal for reconsideration. The above quoted averments made by the petitioner cannot be construed to mean that it was sought to be conveyed by the petitioner that in its case also the matter had reached upto Supreme Court and that the Supreme Court had directed the Tribunal to rehear the petitioner's matter. What was sought to be emphasised by the petitioner by making above-mentioned statements was that the petitioner should

be accorded the same treatment as was meted out to the other ship-breakers and that its case should be considered on merits. It may be mentioned that the order of the Tribunal dated November 13, 2002 in Stay Order No.285-288/02 is set aside and the matters were reopened and remanded to the Tribunal for reconsideration. To deny the benefit of decision of the Supreme court to the petitioner, without any reasonable cause, would amount to discrimination which would fly in the face of the provisions of Article 14 of the Constitution. Therefore, this Court is of the opinion that the Tribunal was not justified in not entertaining the restoration application filed by the petitioner on the ground that false averments were made in the restoration application to the effect that the matter of the petitioner had reached upto the Supreme Court. Mr. A.D.Maru, learned counsel for the petitioner has stated at the Bar that cases of other ship-breakers were considered by the Tribunal pursuant to direction of the Supreme Court and that the Tribunal had remanded the matters to the Commissioner (Appeals), who, in turn, has remanded the matter to the Assistant Commissioner of Customs, Bhavnagar for reconsideration.

6. It may be stated that this petition was placed for admission hearing before Division Bench comprising D.A.Mehta and Ms.H.N.Devani,JJ. on January 30, 2006 and after hearing the learned counsel for the petitioner, notice was issued making it returnable on

February 24, 2006. While issuing notice to the respondents, respondent No.3 was directed to verify the factum whether the entire duty demanded has been paid up. The learned counsel for the respondent No.3 states at the Bar that the entire amount of duty demanded is deposited by the petitioner. This is an additional ground on which this Court is inclined to accept the prayer made by the petitioner in the petition. On the facts and in the circumstances of the case, this Court is of the view that the order of the Tribunal cannot be sustained and is liable to be set aside.

For the foregoing reasons, the petition succeeds. The order dated October 31, 2005 rendered by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi, in No.C/M/797/05, C/ROA/157/05 in Appeal No.C/414/02 is hereby set aside. The matter is remanded to the Tribunal for disposal on merits and in accordance with law. Rule is made absolute There shall be no costs.

[J.M.PANCHAL,J.]

[BANKIM.N.MEHTA,J.]

(patel)